

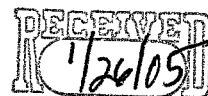
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05-AP-A

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January 17, 2005



Joseph H. Spaniol Jr., Esq., Secretary
Standing Committee on Rules of
Practice and Procedure
Administrative Office of the U.S. Courts
Washington, DC 20544

Re: Proposed Amendments To Rules 35 and 40 of
the Federal Rules of Appellate Procedure

Dear Mr. Spaniol:

For several years now, appellate practitioners have been able to adjust to the "type-volume" limitations for principal briefs and reply briefs as set forth in Fed. R. App. P. 32(a)(7). To a large degree, this has freed appellate practitioners from concerns about number of pages and the like, knowing that the word processor can instantaneously provide a word count and allow the practitioner to know whether he or she is in compliance with the type-volume limitation.

However, and unfortunately, there presently are no comparable provisions in Rules 35 and 40 dealing with petitions for rehearing and petitions for rehearing *en banc*. When an appeal progresses to that stage, it is necessary for the practitioner to revert to the older rules and to be concerned with margins, typefaces and the like.

Accordingly, I respectfully recommend that provisions be added to Rules 35 and 40 providing appropriate type-volume limitations for petitions for rehearing and petitions for rehearing *en banc*.

I appreciate your consideration of this proposal.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP

ROY H. WEPNER

RHW/dg